

D.P.U. 96-50 (Phase I)

Investigation by the Department of Public Utilities on its own motion as to the propriety of the rates and charges set forth in the following tariffs: M.D.P.U. Nos. 944 through 970, filed with the Department on May 17, 1996, to become effective June 1, 1996, by Boston Gas Company; and investigation of the proposal of Boston Gas Company to implement performance-based ratemaking, and a plan to exit the merchant function.

APPEARANCES: Catherine L. Nesser, Esq.
 Jeffrey M. Leupold, Esq.
 Thomas P. O'Neill, Esq.
 Boston Gas Company
 One Beacon Street
 Boston, Massachusetts 02108

-and-

James K. Brown, Esq.
 Foley, Hoag & Elliot
 One Post Office Square
 Boston, Massachusetts 02109
 FOR: BOSTON GAS COMPANY
Petitioner

Charles H. Shoneman, Esq.
 Bracewell & Patterson, L.L.P.
 2000 K Street, N.W.
 Washington, D.C. 20006-5800
 FOR: ALBERTA ENERGY COMPANY LIMITED;
 PROGAS LIMITED; PRODUCERS
 MARKETING LIMITED; TRANSCANADA
 SERVICES
Intervenors

Patrick J. Hester
Vice President/General Counsel
1284 Soldiers Field Road
Boston, Massachusetts 02135
FOR: ALGONQUIN GAS
TRANSMISSION COMPANY
Intervenor

Jeffrey F. Jones, Esq.
Laurie S. Gill, Esq.
Jay E. Gruber, Esq.
Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108
FOR: ALLENERGY MARKETING COMPANY, INC.
Intervenor

J. Miles McKinney, Jr., Esq.
Amoco Production Company
550 Westlake Blvd.
Mail Code 1488W3
Houston, Texas 77079-2627
FOR: AMOCO CORPORATION
Intervenor

Robert Ruddock, General Counsel
Judith A. Sylvia, Esq.
Associated Industries of Massachusetts
222 Berkeley Street, P.O. Box 763
Boston, Massachusetts 02117-0763
FOR: ASSOCIATED INDUSTRIES OF
MASSACHUSETTS
Intervenor

By: L. Scott Harshbarger, Attorney General
George B. Dean
James W. Stetson
William M. McAvoy
Frank P. Pozniak
Assistant Attorneys General
Regulated Industries Division
200 Portland Street
Boston, Massachusetts 02114
Intervenor

Paul K. Connolly, Jr., Esq.
Paul B. Dexter, Esq.
Méabh Purcell, Esq.
LeBoeuf, Lamb, Greene & MacRae
260 Franklin Street
Boston, Massachusetts 02110
FOR: BAY STATE GAS COMPANY
Intervenor

Emmett E. Lyne, Esq.
Rich, May, Bilodeau & Flaherty
294 Washington Street
Boston, Massachusetts 02108-1360
FOR: BERKSHIRE GAS COMPANY
Intervenor

John Deveraux, Esq.
City of Boston Law Department
City Hall, Room 615
Boston, Massachusetts 02201
FOR: CITY OF BOSTON
Intervenor

John Cope-Flanagan, Esq.
COM/Energy Services Company
One Main Street, P.O. Box 9150
Cambridge, Massachusetts 02142
FOR: COMMONWEALTH GAS COMPANY
Intervenor

Robert F. Sydney, General Counsel
Maribeth Ladd, Esq.
Commonwealth of Massachusetts
Division of Energy Resources
100 Cambridge Street, Suite 1500
Boston, Massachusetts 02202

-and-

Kenneth L. Kimmel, Esq.
Bernstein, Kushner & Kimmel, P.C.
One Court Street, Suite 700
Boston, Massachusetts 02108

FOR: COMMONWEALTH OF

MASSACHUSETTS
RESOURCES

DIVISION OF ENERGY
Intervenor

Peter G. Esposito, Esq.
Gregory K. Lawrence, Esq.
John, Hengerer & Esposito
1200 17th Street, N.W., Suite 1600
Washington, D.C. 20036

FOR: DIRECT ENERGY MARKETING, INC.
Intervenor

Richard G. McLaughry, Esq.
Distrigas of Massachusetts Corporation
75 State Street, 12th Floor
Boston, Massachusetts 02109

-and-

John Traficante, Esq.
Cabot Corporation
75 State Street
Boston, Massachusetts 02109

FOR: DISTRIGAS OF MASSACHUSETTS
CORPORATION
Intervenor

Peter G. Esposito, Esq.
Gregory K. Lawrence, Esq.
John, Hengerer & Esposito
1200 17th Street, N.W., Suite 1600
Washington, D.C. 20036
FOR: EASTERN ENERGY MARKETING, INC.
Intervenor

Andrew J. Newman, Esq.
Rubin and Rudman
50 Rowes Wharf
Boston, Massachusetts 02110
FOR: THE ENERGY CONSORTIUM
Intervenor

Randall S. Rich, Esq.
Bracewell & Patterson, L.L.P.
2000 K Street, N.W.
Washington, D.C. 20006-1809
FOR: ENRON CAPITAL AND TRADE RESOURCES
CORP
Intervenor

Phillip L. Sussler, Esq.
225 Main Street, 5th Floor
Hartford, Connecticut 06106
FOR: ERI SERVICES, INC.
Intervenor

Robert J. Keegan, Esq.
Keohane & Keegan
21 Custom House Street
Boston, Massachusetts 02110
FOR: ESSEX COUNTY GAS COMPANY
Intervenor

Emmett E. Lyne, Esq.
Eric J. Krathwohl, Esq.
Rich, May, Bilodeau & Flaherty
294 Washington Street
Boston, Massachusetts 02108
FOR: FALL RIVER GAS COMPANY
Intervenor

Usher Fogel, Esq.
Roland, Fogel, Koblenz, & Carr
One Columbia Place
Albany, New York 12207
FOR: GLOBAL PETROLEUM, INC.
Intervenor

William A. Williams, Esq.
Fulbright & Jaworski, L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2604
FOR: IMPERIAL OIL RESOURCES, INC.
Intervenor

Gregory K. Lawrence, Esq.
John, Hengerer & Esposito
1200 17th Street, N.W., Suite 1600
Washington, D.C. 20036
FOR: KEYSpan ENERGY SERVICES, INC.
Intervenor

Edward L. Selgrade, Esq.
200 Wheeler Road, Suite 400
Burlington, Massachusetts 01803
FOR: TOWN OF LEXINGTON
Intervenor

Nancy Brockway, Esq.
National Consumer Law Center
18 Tremont Street
Boston, Massachusetts 02108
FOR: PEARL NOORIGAN AND SAMUEL
GRAZIANO-LOW INCOME RATEPAYERS
Intervenors

Paul W. Gromer, Esq.
Northeast Energy Efficiency Council
77 North Washington Street
Boston, Massachusetts 02114-1908
FOR: NORTHEAST ENERGY EFFICIENCY
COUNCIL
Intervenor

Emilio Petroccione, Esq.
Roland, Fogel, Koblenz, & Carr
One Columbia Place
Albany, New York 12207
FOR: MASSACHUSETTS OIL HEAT COUNCIL
Intervenor

Peter G. Esposito, Esq.
John, Hengerer & Esposito
1200 17th Street, N.W., Suite 1600
Washington, D.C. 20036
FOR: NATURAL GAS CLEARINGHOUSE
Intervenor

Robert N. Werlin, Esq.
Keohane & Keegan
21 Custom House Street
Boston, Massachusetts 02110
FOR: NORTH ATTLEBORO GAS COMPANY
Intervenor

Gordon J. Smith, Esq.
Gregory K. Lawrence, Esq.
John, Hengerer & Esposito
1200 17th Street, N.W.
Washington, D.C. 20036

-and-

John R. Orr, Esq.
PanEnergy Gas Services, Inc.
One Westchase Center, 1077 Westheimer
Houston, Texas 77403
FOR: PANENERGY TRADING AND MARKET
SERVICES, LLC
Intervenor

Richard J. Kruse, Vice-President and General Counsel
Cynthia A. Corcoran, Managing Counsel
Texas Eastern Transmission Corporation
P.O. Box 1642
Houston, Texas 77251-1642
FOR: TEXAS EASTERN TRANSMISSION
COMPANY

Intervenor

James H. Norris, Esq.
Eckert Seamans Cherin & Mellott
600 Grant Street, 42nd Floor
Pittsburgh, Pennsylvania 15219

-and-

John F. Smitka, Esq.
Eckert Seamans Cherin & Mellott
One International Place, 18th Floor
Boston, Massachusetts 02110
FOR: TEXAS-OHIO GAS, INC.
Intervenor

William H. Penniman, Esq.
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 2000-2404
FOR: UNITED STATES GYPSUM, INC.
Intervenor

Peter G. Esposito, Esq.
Gregory K. Lawrence, Esq.
John, Hengerer & Esposito
1200 17th Street, N.W., Suite 1600
Washington, D.C. 20036
FOR: UTILICORP UNITED, INC.
Intervenor

Timothy A. Clark, Esq.
Colonial Gas Company
40 Market Street, P.O. Box 3064
Lowell, Massachusetts 01853
FOR: COLONIAL GAS COMPANY
Limited Participant

Thomas G. Robinson, Esq.
Amy G. Rabinowitz, Esq.
New England Power Service Company
25 Research Drive
Westborough, Massachusetts 01582
FOR: MASSACHUSETTS ELECTRIC COMPANY
Limited Participant

Susan Waller, Esq.
Tennessee Gas Pipeline
1010 Milam Street
Houston, Texas 77252-2511
FOR: TENNESSEE GAS PIPELINE COMPANY
Limited Participant

Larry S. McGaughy
Operating Manager
CNE Energy Services Group, Inc.
855 Main Street
Bridgeport, Connecticut 06604-4918
FOR: TOTAL LOUIS DREYFUSS ENERGY
SERVICES, L.L.C.
Limited Participant

ORDER ON JOINT MOTION FOR APPROVAL OF
OFFER OF PARTIAL SETTLEMENT

I. INTRODUCTION

On May 17, 1996, Boston Gas Company ("Boston Gas" or "Company") filed with the Department of Public Utilities ("Department") tariff schedules of proposed rates and charges designed to increase the Company's annual retail revenues by approximately \$30 million, or 4.7 percent, based on a test year ending December 31, 1995. The Company also filed a request for approval of (1) a performance-based ratemaking ("PBR") plan, (2) a transition plan for the full unbundling of gas commodity sales and gas distribution services to all customers to be phased in by the Company over a four-year period, and (3) a plan to exit the merchant function by November, 2000. The matter was docketed as D.P.U. 96-50. By Order dated May 20, 1996, the Department suspended the effective date of the proposed tariffs until December 1, 1996, in order to investigate the propriety of the changes sought by the Company.

Pursuant to notice duly issued, the Department conducted three public hearings in the Company's service territory on June 26, June 27, and July 11, 1996, in Revere, Leominster and Newton, respectively, in order to afford interested persons an opportunity to comment on the proposed rates, PBR plan, transition plan, and exit plan. The Department conducted 24 days of evidentiary hearings at the Department's offices between July 22, 1996 and September 18, 1996. Pursuant to G.L. c. 12, § 11E, the Attorney General of the Commonwealth filed a notice of intervention in the proceeding. In addition, the Department granted petitions to intervene on behalf of the following entities: Alberta Energy Company Limited, Progas Limited, Producers Marketing Limited, and TransCanada Gas Services (collectively, "Canadian Marketers");

Algonquin Gas Transmission Company ("Algonquin"); AllEnergy; Amoco Corporation; Associated Industries of Massachusetts ("AIM"); Bay State Gas Company ("Bay State"); Berkshire Gas Company ("Berkshire"); City of Boston; Commonwealth Gas Company ("ComGas"); Direct Energy Marketing, Inc.; Distrigas of Massachusetts Corporation ("DOMAC"); Commonwealth of Massachusetts Division of Energy Resources ("DOER"); Eastern Energy Marketing, Inc.; the Energy Consortium ("TEC"); Enron Capital and Trade Resources Corp. ("Enron"); ERI Services, Inc.; Essex County Gas Company ("Essex"); Fall River Gas Company ("Fall River"); Global Petroleum ("Global"); Imperial Oil Resources ("Imperial"); KEYSPAN Energy Services, Inc.; the Town of Lexington; Northeast Energy Efficiency Council ("NEEC");¹ Massachusetts Oil Heat Council ("MOC"); Natural Gas Clearinghouse; Pearl Noorigan and Samuel Graziano ("Low-Income Intervenors"); North Attleboro Gas Company ("North Attleboro"); PanEnergy Trading and Market Services, LLC ("PanEnergy"); Texas Eastern Transmission Company ("TETCO"); Texas-Ohio Gas, Inc. ("Texas-Ohio"); United States Gypsum Company ("US Gypsum"); and Utilicorp United, Inc. The Department granted limited participant status to the following entities: Massachusetts Electric Company ("MECo"); Colonial Gas Company ("Colonial"); Total/Louis Dreyfuss Energy Services, L.L.C.; and Tennessee Gas Pipeline Company, Inc. ("Tennessee").

On October 9, 1996, the Company, Algonquin, DOMAC, Global, Natural Gas Clearinghouse, Tennessee, and Texas-Ohio (collectively, "Settling Parties") filed with the Department a Joint Motion for Approval of an Offer of Partial Settlement ("Motion") and the

¹ On September 25, 1996, the Massachusetts Energy Efficiency Council changed its name to the Northeast Energy Efficiency Council.

Offer of Partial Settlement ("Settlement"). Pursuant to the terms of the Settlement, the Department must approve the Settlement in its entirety by November 8, 1996, or it is rendered null and void (Settlement at 7).

II. DESCRIPTION OF PROPOSED PARTIAL SETTLEMENT

The Settlement provides, inter alia, for terms, conditions, rates, and charges for a range of services for commercial and industrial ("C&I") customers, including general transportation and general receipt services, optional transportation and optional receipt services, and balancing services. The Settlement includes the proposed tariffs for each of these services, designated as M.D.P.U. 967 through M.D.P.U. 971. Among the terms of the Settlement, the Settling Parties agree that the Company will offer unbundled transportation service to its C&I customers as of December 1, 1996, and cease sales service (i.e., exit the merchant function) for C&I customers effective November 1, 1998 (id. at 5). The proposed general transportation receipt service tariff, M.D.P.U. 967, provides, inter alia, that eligible customers will accept mandatory assignment of the Company's domestic pipeline and storage capacity contracts, as well as certain Canadian supply contracts bundled and delivered at the border (id., App. A at 11).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review all available information to ensure that the settlement is consistent with Department precedent and the public interest. Boston Edison Company, D.P.U. 92-130-D at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). A settlement among the parties does not relieve the Department of its statutory

obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Bay State Gas Company, D.P.U. 95-104, at 15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). The Department has accepted settlement provisions which were not originally proposed in a company's filing when the overall effect of the settlement, on balance, was desirable for ratepayers and consistent with the overall direction of the Department's policies. Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989).

IV. ANALYSIS AND FINDINGS

The Department has reviewed the Settlement in light of the Company's proposal and the entire record in this proceeding. After evaluating the Settlement, the Department has serious concerns. In addition, the Department notes that the Settling Parties constitute but a small number of the intervenors in this proceeding who represent a comparatively narrow subset of the parties.

With respect to the Company's proposal to exit the merchant function for C&I customers, the Department made it clear that the Company's exit proposal would be considered in Phase II of this proceeding (Tr. of Prehearing Conference at 15). As a result, there is insufficient evidence on this issue in Phase I to evaluate properly this aspect of the Settlement.

With respect to the Company's proposed capacity assignment program, the Settling Parties have proposed mandatory assignment of upstream capacity contracts and the Canadian supply contracts to C&I customers. In view of the arguments on mandatory versus voluntary assignment raised in this proceeding, there is marked disagreement between parties who signed the Settlement and those who did not. Although the Department is supportive of the use of settlements, it is the

Department's obligation to evaluate major issues fully when those issues are not resolved among affected parties. The issue of capacity assignment warrants a full review to enable the Department to develop policies and precedents so that other participants in the natural gas industry will have a better understanding of the issues.

Further, the Department notes that one of the signatories to the Settlement states that if the Department rejects the Settlement, it will be "substituting its administrative judgment for the market solution" and that "the positions of those who have neither a financial stake in the market nor the obligation to operate in the market under the rules they propose should not be permitted to undermine the market's solution" (Texas-Ohio Reply Brief at 6-7). Also, the Canadian Marketers, Enron and PanEnergy have the same financial stake in the market as Texas-Ohio and have not signed the Settlement. Intervenors, including, but not limited to, the Attorney General, DOER, and TEC, certainly have an interest in most, if not all, issues raised in this proceeding. It is the Department's obligation to evaluate issues in light of the evidence and arguments raised by these parties.

Based on our review, the Department finds that the Settlement is not adequately supported by the record, and is premature. Accordingly, the Department rejects the Settlement.

V. ORDER

After due consideration, it is

ORDERED: That the Joint Motion for Approval of Partial Settlement filed by Boston Gas Company, Algonquin Gas Transmission, Distrigas of Massachusetts Corporation, Global Petroleum Corporation, Natural Gas Clearinghouse, Tennessee Gas Pipeline Company, and Texas-Ohio Gas, Inc. on October 9, 1996, hereby is DENIED.

By Order of the Department,

John B. Howe, Chairman

Janet Gail Besser, Commissioner